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It was correct and proper to allow evidence, not to contradict or vary the terms of a written instrument or record, but to show that the instrument was invalid as a deed, in that, it never had any legal existence because of a lack of due execution or unauthorized alteration. GREENLEAF ON EVIDENCE, § 284, Vol. 1; *Barnett* v. *Abbot,* 53 Ves. 120; *Cort* v. *Churchill Co.,* 61 Ia. 296. Although the words used in the instrument are, "witness my hand and seal," this is not sufficient to make a deed. The actual seal must be affixed. Cases in support of this rule are: *Pratt* v. *Clemens,* 4 W. Va. 443; *Deming* v. *Bullit* (Ind.) 1 Blackf. 241; *McPherson* v. *Reese,* 58 Miss. 749; *Patterson* v. *Gallagher,* 122 N. C. 511; *Vance* v. *Funk,* 3 Ill. 263. Such conveyance, although not sufficient at law to pass the legal title, and on which an action of ejectment might be sustained, could be enforced in equity where it could be shown that it was the intention of the parties to affix the seal, but it was omitted from mere oversight. *McCauley* v. *The Board of Supervisors,* 58 Miss. 483; *Wadsworth* v. *Wendell,* 5 Johns. Ch. 224; *Rutland* v. *Page,* 24 Vt. 181. In those states where the seal is not necessary to the validity of a conveyance, the courts have held that the signature of the party is sufficient, although the same may state, "witness my hand and seal," and no seal is used. *Jerome* v. *Ortman,* 66 Mich. 668; *Goodlett* v. *Hansell,* 56 Ala. 346; *Stanley* v. *Green,* 12 Cal. 148. However on the other hand, there is a conflict in the cases where a seal or scroll has been used and the words, "witness my hand and seal" do not appear. The general rule seems to be that if the deed were actually sealed this is enough without the recital. *Foundry Co.* v. *Hovey,* 21 Pick. 417; *Burton* v. *LeRoy,* 5 Sawy. 510; *Wing* v. *Chase,* 35 Me. 260. On the contrary there are decisions to the effect that an instrument that has no recital that it is sealed, is not a sealed instrument, although it has a scroll annexed and the word seal written therein. *Armstrong* v. *Pearce,* 5 Har. (Del.) 351; *Jenkins* v. *Hunt,* 2 Rand. 446.

DOWER—RIGHTS OF WIDOW PENDING ASSIGNMENT—POSSESSION OF LANDS.—Plaintiff had purchased land from D.'s wife, D. giving his written assent. The deed contained the usual covenants, and when plaintiff attempted to enter, he was met by the widow and heirs of B., who were in possession and who forbade his entrance. D.'s wife had acquired title to said land by conveyance from the administrator of B. In an action by plaintiff to recover his expenses in obtaining possession of the land, *held,* that until allotment of dower, the widow has no right to retain possession of her deceased husband's lands against the heir or those claiming under him. *Fishel* v. *Browning et al.* (1907), — N. C. —, 58 S. E. Rep. 759.

This decision is in accord with the common law as given in 2 BLA. COMM. 135. Although the different states have statutes concerning dower, the question as to the widow's rights prior to assignment is in dispute. The principal case is in accord with *Tierney* v. *Whiting,* 2 Colo. 620; *Sharpley* v. *Jones,* 5 Har. (Del.) 373; *Hoots* v. *Graham,* 23 Ill. 79; *Cavender* v. *Smith,* 8 Iowa 360; *Wyman* v. *Richardson,* 62 Me. 293; *Hilleary* v. *Hilleary,* 26 Md. 274; *Hildreth* v. *Thompson,* 16 Mass. 191; *State* v. *Thompson,* 130 N. C. 680, 41 S. E. 486; *McCully* v. *Smith,* 2 Bailey (S. C.) 103. These cases seem to

constitute the weight of authority and they certainly accord with the common law. On the other hand it has been held that a widow entitled to dower, becomes, immediately upon the death of her husband, tenant in common with his heirs, and remains such until assignment of dower. *Steadman* v. *Fortune,* 5 Conn. 462. The following cases hold that the widow has the right to remain in possession as against the heirs: *Robinson* v. *Miller,* 40 Ky. 88; *Gourley* v. *Kinley,* 66 Pa. St. 270; *Gorham* v. *Daniels,* 23 Vt. 600; *McReynolds* v. *Counts,* 9 Grat. (Va.) 242. Some courts hold that the widow has the right to enjoy the mansion house of her deceased husband, and the messuages and plantations thereunto annexed until assignment of dower. *Roberts* v. *Nelson,* 86 Mo. 21; *Caillaret* v. *Bernard,* 15 Miss. 319; *Smallwood* v. *Bilderback,* 16 N. J. Eq. 497.

EMINENT DOMAIN—INTERURBAN RAILWAYS.—The petitioner, an interurban electric railroad company, commenced proceedings to condemn land for a right of way within the villages of Tonka Bay and Excelsior. Title 1, c. 34, Gen. St., 1894, provides for the incorporation of such companies "for works of internal improvement," and confers the right of eminent domain. The company was organized under title 2, which gives no such power. *Held,* that the incorporators in fact complied with the provisions of title 1, that the company was a commercial rather than a street railway, a public service corporation, possessing the right of eminent domain. *In re Minneapolis and St. P. Suburban Ry. Co.; Minneapolis and St. P. Suburban Ry. Co.* v. *Manitou Forest Syndicate et al.* (1907), — Minn. —, 112 N. W. Rep. 13.

The decision is in entire accord with the attitude of the Minnesota courts toward interurban electric roads. *Carli* v. *Stillwater, etc., Tr. Co.,* 28 Minn. 373; *Funk* v. *St. P. C. Ry. Co.,* 61 Minn. 435; *State* v. *Duluth St. Ry. Co.,* 76 Minn. 96. Steam railroads have had little trouble in securing the right of condemning property. Street railroads do not have this power inherently nor is it readily granted to them. *Hartshorne* v. *Ill. Valley Tr. Co.,* 210 Ill. 609; *State ex rel Roebling* v. *Trenton Pass. R. Co.,* 58 N. J. L. 666; *Thompson, etc, Co.* v. *Simon,* 20 Ore. 60; *Lange* v. *La Crosse and E. R. Co.,* 118 Wis. 558. And when granted the statute is strictly construed. *In re S. B. R. Co.,* 119 N. Y. 141; *In re Minneapolis, etc., R. Co.,* 76 Minn. 302; *Chicago and N. W. Ry. Co.* v. *Oshkosh, etc., R. Co.,* 107 Wis. 192. The question is whether the interurban line is a commercial road, like the steam railway, or is only a development of the street railway. If the former, since it must bear the burden of the steam carrier, it should have the rights of the public service corporation. The distinction between the commercial road and the street railway does not depend upon the motive power, nor, necessarily, upon the fact that passengers alone are carried. The entire nature and extent of the business must be considered. *Harvey* v. *Railway,* 174 Ill. 295; *Eichels* v. *Evansville, etc., Co.,* 78 Ind. 261; *Diebold* v. *Kentucky Tr. Co.,* 117 Ky. 146; *Briggs* v. *Lewiston, etc., R. Co.,* 79 Me. 363; *Hannah* v. *St. Ry. Co.,* 81 Mo. App. 78; *South Bound R. Co.,* v. *Burton,* 67 S. C. 515; *Rische* v. *Texas Trans. Co.,* 27 Tex. Civ. App. 33; *Malott* v. *Collinsville, etc., Co.,* 108 Fed. Rep. 313, 318. Decisions upon the exact point involved in the principal case